

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1384 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES  
YES
  2. To be referred to the Reporter or not? NO :
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO  
NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?NO : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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MAHENDRAKUMAR BHAISHANKER      DAVE

Versus

STATE OF GUJARAT  
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Appearance:

MR PJ VYAS for Petitioner  
MR PREMAL JOSHI, AGP for Respondent No. 1  
M/S PURNANAND & CO for Respondent No. 2  
MR PM RAVAL for Respondent No. 3  
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CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 07/04/2000

ORAL JUDGEMENT

1. The petitioner challenges the order dated 24th November 1987 of the Board of Appeal, Mehsana under the

Town Planning Act in so far as it relates to the petitioner's appeal which was Town Planning Appeal No. 4/1984.

2. The only contention that was canvassed at the time of hearing of this petition on behalf of the petitioner is that the Board could not have passed the impugned order, because one of the Members of the Board of Appeal was not present. The fact that one of the Members of the Board of Appeal had remained absent and that the order of the Board of Appeal was signed only by the President and one Member, and that the other Member had not signed the same as he was absent, is duly verified from the original record by the learned Assistant Government Pleader, who states that there is no dispute about the fact that one of the Members of the Board of Appeal was absent. This fact is also noted in the order of the Board of Appeal in para 11 in which it has been stated that, after carrying out the formalities mentioned therein and after receipt of the decision of the Town Planning Officer, one of the assessors had not remained present and therefore, in his absence, the appeals had to be decided. It is clearly recorded that the Board had functioned with only one assessor.

3. Under Rule 29[1] of the Gujarat Town Planning & Urban Development Rules, 1979, it has been categorically provided that no business shall be transacted by the Board of Appeal unless all the members are present. Sub-rule [2] of Rule 29 of the said Rules provides that, where any Member of the Board ceases to act the Board shall proceed with any business in hand as soon as a new member is appointed under sub-section [4] of section 55 and it shall not be necessary to transact any business denovo by reason of such change in the Constitution of the Board.

4. In spite of this clear mandate of Rule 29[1] that no business shall be transacted by the Board of Appeal unless all members are present, the Board of Appeal transacted the business though one of the members was admittedly absent and he has not even signed the order since he did not participate in the proceedings, as noted in the impugned order itself. Therefore, the impugned order, to which this petition relates made by the Board of Appeal in the appeal of the petitioner, is made by a Board which could not have transacted the business in absence of one of the members.

5. The impugned order is therefore clearly in contravention of the provisions of Rule 29[1] of the said

Rules and therefore, illegal and void, and is hereby set aside. The petitioner's appeal shall be heard by a duly constituted Board of Appeal in accordance with the provisions of section 55 of the Act and Rule 29 of the Rules and be expeditiously decided in accordance with law. Rule is made absolute accordingly, with no orders as to costs.

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